

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments change the Department's procedures for implementation of the federal preadmission screening and annual resident review (PASRR) requirements for nursing facilities. These requirements are published in 42 CFR Part 483, Subpart C. These requirements apply to all persons seeking care in a Medicaid-certified facility, regardless of the source of payment for that care.

PASRR regulations require that persons seeking to enter nursing facilities must be reviewed to screen for mental retardation, a related condition, or mental illness (Level I review). If one of these conditions is indicated, a review must be conducted to evaluate whether the person actually needs nursing facility care, needs specialized services for mental retardation or mental illness, or needs both nursing care and specialized services (Level II review). The state mental health authority (the Department's Division of Mental Health and Disability Services) must approve the person's evaluation and plan of care to ensure that the person is receiving appropriate care and treatment.

The Department has contracted with Ascend Management Innovations, LLC, to perform the evaluations required for Level II reviews. These amendments list conditions that temporarily or permanently exempt a person from Level II review. The amendments also provide that the Department will not approve payment for a person's nursing facility care until a Level I review and (if indicated) a Level II review are completed. This provision is expected to result in cost avoidance for the state and is included in Governor Branstad's list of cost containment recommendations.

These amendments were also Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on September 7, 2011, as **ARC 9726B**. Notice of Intended Action to solicit comment on the amendments was published as **ARC 9727B** on the same date. The Department received comment on the Notice of Intended Action from the Iowa Health Care Association. The comments addressed three concerns:

- Admissions are being delayed waiting for a Level II review, especially on weekends.
- Facilities are concerned that residents admitted with a waiver of Level II review would become ineligible after admission and require involuntary discharge or a period with no payment.
- Facilities want a specific waiver process for residents admitted in good faith.

The Department recognizes that these amendments require a shift in business practices for nursing facilities and is working to minimize the impact on facilities and the people applying for facility services. The concern over delayed admissions is a valid one. The limitation pertaining to night and weekend screenings is related to availability of staff to perform Level I screenings at the Iowa Medicaid Enterprise (IME), not to availability of the contractor for Level II reviews.

In response to this concern, the IME announced on August 29, 2011, that a Web-based Level I screening system is planned for implementation on January 1, 2012. An interim process has been put in place in which a hospital may proceed with the discharge to the facility when a person's health or safety requires a night or weekend admission, without financial penalty to the facility.

There has also been some initial delay in completing Level II reviews due to a higher than expected volume of screenings and evaluations. While the Level II contractor is meeting contractual requirements in most cases, both the Department and the contractor recognize that more can be done to make the process more efficient. Several steps have already been taken toward this, including:

- Changing policy to no longer require a Level II review when only situational depression or anxiety or a historical mental illness diagnosis is present.
- Increasing the number of document-based reviews that may be done in place of in-person evaluations.
- Recruiting additional Level II evaluators.

- Initiating a series of meetings with providers and their professional associations in order to resolve issues and keep communication channels open.

In the time since these adjustments have been made, it appears that the number of Level II reviews and the corresponding response times have leveled off. Also, the Department announced on September 28, 2011, that no penalties to providers would be effectuated until the automated PASRR Level I system becomes operational in January 2012.

It appears that concerns may have arisen from the perception that admitting a resident under the category of a hospital exemption or a categorical determination would not guarantee Medicaid payment for the resident. Hospital exemptions and categorical determinations are both valid Level II outcomes. Any facility admitting a Medicaid member under one of these categories will be reimbursed.

When a hospital exemption or categorical determination expires, the facility is responsible for notifying the Level II contractor to initiate a resident review. The vast majority of members will continue to be eligible to receive care in the facility. Exceptions may occur when only a short-term stay was expected or a drastic change in the member's condition has occurred. If nursing facility services are no longer appropriate, Medicaid will continue to reimburse the facility while an orderly discharge occurs.

The Department believes that the current exception to policy (waiver) process will adequately address any cases with special circumstances.

The items have been changed to rescind the amendments that were previously Adopted and Filed Emergency and to adopt new language in lieu thereof. However, the new language is identical to that Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on November 9, 2011.

These amendments do not provide for waivers in specified situations since reviews are required by federal Medicaid regulations. However, the Department does have a general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments shall become effective on January 4, 2012, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

The following amendments are adopted.

ITEM 1. Rescind the definitions of "Level I review," "Level II review" and "PASRR" in rule **441—81.1(249A)** and adopt the following new definitions in lieu thereof:

"*Level I review*" means screening to identify persons suspected of having mental illness or mental retardation as defined in 42 CFR 483.102 as amended to October 1, 2010.

"*Level II review*" means the evaluation of a person identified in a Level I review to determine whether nursing facility services and specialized services are needed.

"*PASRR*" means the preadmission screening and annual review of persons with mental illness, mental retardation or a related condition who live in or seek entry to a Medicaid-certified nursing facility, as required by 42 CFR Part 483, Subpart C, as amended to October 1, 2010.

ITEM 2. Rescind subrule 81.3(3) and adopt the following new subrule in lieu thereof:

81.3(3) Preadmission review. The IME medical services unit shall complete a Level I review for all persons seeking admission to a Medicaid-certified nursing facility, regardless of the source of payment for the person's care. When a Level I review identifies evidence for the presence of mental illness or mental retardation, the department's contractor for PASRR evaluations shall complete a Level II review before the person is admitted to the facility.

a. Exceptions to Level II review. Persons in the following circumstances may be exempted from Level II review based on a categorical determination that in that circumstance, admission to or residence in a nursing facility is normally needed and the provision of specialized services for mental illness, mental retardation, or related conditions is normally not needed.

(1) The person's attending physician certifies that the person is terminally ill with death expected within six months, the person requires nursing care or supervision due to the person's physical condition, and the person is not a danger to self or others. If the person's nursing facility stay exceeds six months, a Level II review must be completed.

(2) The severity of the person's illness results in impairment so severe that the person could not be expected to benefit from specialized services, and the person does not present a danger to self or others. This category includes persons who are comatose, who function at brain-stem level, who are ventilator-dependent, or who have diagnoses such as Parkinson's disease, Huntington's chorea, amyotrophic lateral sclerosis, chronic obstructive pulmonary disease (COPD), or congestive heart failure (CHF).

(3) The person is suffering from delirium. Exemptions made on a basis of delirium are valid until the delirium clears or for seven days, whichever is sooner.

(4) The person is in an emergency situation that requires protective services with placement in the nursing facility. A Level II review must be completed if the admission lasts more than seven days.

(5) The admission is for the purpose of providing respite to the person's caregiver. If the nursing facility stay exceeds 30 days, a Level II review must be completed.

(6) The person has dementia in combination with mental retardation or a related condition.

(7) The person has been approved for specialized services in another facility based on a previous Level II evaluation, the specialized services still meet the person's needs, and the receiving facility agrees to provide the specialized services.

(8) The person is transferring directly from receiving acute hospital inpatient care and requires nursing facility services for the same acute physical illness for which hospital care was received, and the person's attending physician certifies before the admission that the person is likely to require less than 30 days of nursing facility services. If the person is later found to require more than 30 days of nursing facility care, a Level II review must be completed within 40 calendar days of the person's admission date.

(9) The person:

1. Is transferring to a nursing facility directly from receiving acute hospital inpatient care, and
2. Requires nursing facility services for convalescence from the same acute physical illness for which the person received hospital care, and
3. Is clearly sufficiently psychiatrically and behaviorally stable enough for nursing facility admission, and
4. Before entering the facility, has been certified by the attending physician as likely to require less than 60 days of nursing facility services.

b. Outcome of Level II review. The Level II review shall determine whether the person seeking admission:

(1) Needs specialized services for mental illness as defined in paragraph 81.13(14) "b," using the procedures set forth in 42 CFR 483.134 as amended to October 1, 2010; or

(2) Needs specialized services for mental retardation or a related condition as defined in paragraph 81.13(14) "c," using the procedures set forth in 42 CFR 483.136 as amended to October 1, 2010.

c. The department's division of mental health and disability services or its designee shall review each Level II evaluation and plan for obtaining needed specialized services before the person's admission to a nursing facility to determine whether the nursing facility is an appropriate placement.

d. Nursing facility payment under the Iowa Medicaid program will be made for persons with mental illness, mental retardation, or a related condition only if it is determined by the division of mental health and disability services that the person's treatment needs will be or are being met.

ITEM 3. Rescind rule 441—81.7(249A) and adopt the following new rule in lieu thereof:

441—81.7(249A) Continued review.

81.7(1) Level of care. The IME medical services unit shall review Medicaid members' need of continued care in nursing facilities, pursuant to the standards and subject to the appeals process in subrule 81.3(1).

81.7(2) PASRR. Within the fourth calendar quarter after the previous review, the PASRR contractor shall review all nursing facility residents admitted pursuant to paragraph 81.3(3) “c” to determine:

- a. Whether nursing facility services continue to be appropriate for the resident, as opposed to care in a more specialized facility, and
- b. Whether the resident needs specialized services for mental illness or mental retardation as described in paragraph 81.3(3) “b.”

This rule is intended to implement Iowa Code sections 249A.2(1), 249A.3(3), and 249A.4.

ITEM 4. Rescind and reserve paragraph **81.13(9)“f.”**

ITEM 5. Rescind subrule 81.13(14) and adopt the following **new** subrule in lieu thereof:

81.13(14) Specialized services. When indicated, specialized services shall be provided to residents as follows:

a. *Specialized rehabilitative services.* Specialized rehabilitative services shall be provided by qualified personnel under the written order of a physician. If specialized rehabilitative services such as, but not limited to, physical therapy, speech-language pathology, and occupational therapy, are required in the resident’s comprehensive plan of care, the facility shall:

- (1) Provide the required services; or
- (2) Obtain the required services from an outside provider of specialized rehabilitative services.

b. *Specialized services for mental illness.* “Specialized services for mental illness” means services provided in response to an exacerbation of a resident’s mental illness that:

- (1) Are beyond the normal scope and intensity of nursing facility responsibility;
- (2) Involve treatment other than routine nursing care, supportive therapies such as activity therapy, and supportive counseling by nursing facility staff;
- (3) Are provided through a professionally developed plan of care with specific goals and interventions;
- (4) May be provided only by a specialized licensed or certified practitioner;
- (5) Are expected to result in specific, identified improvements in the resident’s psychiatric status to the level before the exacerbation of the resident’s mental illness; and
- (6) May include:

1. Acute inpatient psychiatric treatment. When inpatient psychiatric treatment may be prevented through specialized services provided in the nursing facility, services provided in the nursing facility are preferred.

2. Initial psychiatric evaluation to determine a resident’s diagnosis and to develop a plan of care.

3. Follow-up psychiatric services by a psychiatrist to evaluate resident response to psychotropic medications, to modify medication orders and to evaluate the need for ancillary therapy services.

4. Psychological testing required for a specific differential diagnosis that will result in the adoption of appropriate treatment services.

5. Individual or group psychotherapy as part of a plan of care addressing specific symptoms.

6. Any clinically appropriate service which is available through the Iowa plan for behavioral health and for which the member meets eligibility criteria.

c. *Specialized services for mental retardation or a related condition.* “Specialized services for mental retardation or a related condition” means services that:

- (1) Are beyond the normal scope and intensity of nursing facility responsibility;
- (2) Involve treatment other than routine nursing care, supportive therapies such as activity therapy, and supportive counseling by nursing facility staff;
- (3) Are provided through a professionally developed plan of care with specific goals and interventions;
- (4) Must be supervised by a qualified mental retardation professional; and
- (5) May include:
 1. A functional assessment of maladaptive behaviors.
 2. Development and implementation of a behavioral support plan.

3. Community living skills training for members who desire to live in a community setting and for whom community living is appropriate as determined by the Level II evaluation. Training may include adaptive behavior skills, communication skills, social skills, personal care skills, and self-advocacy skills.

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